IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.K.DENESAN

TUESDAY, THE 13TH MARCH 2007 / 22ND PHALGUNA 1928

WP(C).No. 7216 of 2007(H)

PETITIONER:

G.VIJAYAN, VIJAYA VIHAR,
ELEMPAKAPALLY, KOOVAPPADY,
PERUMBAVOOR.

BY ADV. SRI.M.P.ASHOK KUMAR

RESPONDENTS:

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1. STATE OF KERALA, REPRESENTED BY
ITS CHIEF SECRETARY, SECRETARIAT,
THIRUVANANTHAPURAM.

2. THE ACCOUNTANT GENERAL (PENSION),
THIRUVANANTHAPURAM.

3. THE MANAGING DIRECTOR,
KERALA WATER AUTHORITY, THIRUVANANTHAPURAM.

BY GOVT.PLEADER SRI.BIJOY CHANDRAN
SRI.G.KRISHNAKUMAR R3

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 13/03/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K.K.DENESAN, J

W.P.(C)NO. 7216 of 2007

Dated this the 13th day of March, 2007

JUDGMENT

The petitioner is an ex-service man. He was appointed as Electrician in the office of the Assistant Engineer, Public Health Engineering Department on 19.4.1982. When the Kerala Water Authority was constituted, employees working in the Public Health Engineering Department were transferred to that Authority. The petitioner retired from service on superannuation with effect from 31.1.1994. He has been granted pensionary benefits according to the rules then in force. The Executive Engineer recommended to the higher authorities for sanction of pensionary benefits to the petitioner. But the Accounts Officer took the view that the service of the petitioner cannot be reckoned as qualifying service for pension. This decision was taken as per Ext.P4 order dated 21.11.1994. The petitioner approached this Court against the above decision. This Court as

per Ext.P6 judgment dated 5.10.2005 directed the Government to look into the grievance of the petitioner and take appropriate decision. The petitioner has filed Ext.P7 representation before the Government. As per Ext.P8, Ext.P7 has been rejected. In the last but one paragraph of Ext.P8, it is stated as follows:

> "Eventhough as per Annexure XII 3(ii) of G.O.(P) 54/99/IrD dtd.19.8.1999 the period of service with ESI benefit will also be counted with NMR service for granting pension, this benefit is applicable only to those who retired after 28.2.1997. As Sri.G.Vijayan retired from service on sueprannuation on 31.1.1994, he will not come under the purview of the G.O.(P)No.54/99/IrD dtd. 19.8.1999. Moreover ESI Scheme is an entirely different scheme and it is not in lieu of any pension benefit. Hence he is not entitled to the benefit under Kerala Service Rules."

2. It is evident from Ext.P5 that periods of service mentioned therein will be reckoned as qualifying service for pension only in the case of those who retired after 28.2.1997.

3. The petitioner retired from service in the year 1994. Hence his contention that services mentioned in Ext.P5 shall be

reckoned as qualifying service in his case also has no basis. As long as Ext.P5 holds the field, the view taken by the Government cannot be faulted. Hence, I am of the view that the rejection of Ext.P7 representation as per Ext.P8 is only to be upheld. The writ petition fails and is dismissed.

K.K.DENESAN, JUDGE

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